

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

GERALD DIX)	
Plaintiff,)	
v.)	
)	
CANADIAN NATIONAL RY, UNION)	08CV4269
PACIFIC RR, METRA RR,)	JUDGE NORGLER
and the U.S. EQUAL)	MAGISTRATE JUDGE VALDEZ
EMPLOYMENT OPPORTUNITY)	
COMMISSION, an agency of the United)	
States of America)	
)	
Defendants.)	

DD
F I L E D
Aug 20, 2008
AUG 20 2008

MOTION TO REMAND

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Gerald Dix, plaintiff in the above entitled cause, moves for an order of this court remanding this cause to the state court pursuant to 28 U.S.C. § 1447(c) and, in support thereto, alleges as follows:

1. Defendant EEOC filed a petition for removal of this action from the Circuit Court of Cook County, Illinois on July 28, 2008.
2. In its petition for removal, EEOC stated that this action was removable to this court under the provisions of 28 U.S.C. § 1442.
3. EEOC's petition includes defects in the removal procedure which are the proper bases for remand.
4. Specifically, in its Notice of Removal, the EEOC failed to affirmatively state that it was acting "under color of such office" by direct averments which must exclude the possibility that any of its alleged acts was not justified by its federal duties.
5. In its petition for removal, the EEOC failed to even "simply state" that it was acting "under

color of such office" when it committed the malicious and wrongful acts that directly or proximately caused the injuries to the Plaintiff as outlined in his original complaint.

6. Furthermore, the EEOC waived its right to removal by conspiring with one of the co-Defendants by permitting the state court to proceed with the Plaintiff's lawsuit after the EEOC filed its Notice of Removal with the Clerk of the Circuit Court for Cook County. The EEOC had full knowledge that the Plaintiff's lawsuit would proceed in the state court despite the Notice of Removal issued earlier (See Dix Declaration par. 2).
7. The EEOC sought to benefit from a frivolous and felonious Motion to Dismiss filed by the attorney for the Canadian National Railway (CN). Specifically, CN is attempting to defraud the state court into believing that two of its employees, Donald Sutton and Kelvin Stovall were not employed by CN but rather were employees of Chicago Central and Pacific Railroad Company (See Exhibit 1 and Dix Declaration Exhibit B).
8. The EEOC's employment "dictates" imposed upon Canadian National Railway as well as Illinois Central Railroad form the basis for the Plaintiff's cause of action against the defendant EEOC. The EEOC and the CN are still attempting to conceal their involvement in the hiring and promotion of unqualified, untrained and drug-addicted people for the purpose of operating locomotives in the County of Cook, Illinois in the state court.
9. On August 4, 2008, the Plaintiff appeared before Cook County Judge Lawrence O'Gara to defend his lawsuit against dismissal by the attorney for CN and Metra. Dix promptly notified Judge O'Gara that he received the EEOC's Notice of Removal and that Dix had confirmed that the case had been removed to the federal court and that the Judge Norgle was the presiding judge (See Dix Declaration par. 3)
10. Despite Dix's objection to the proceeding, Judge O'Gara and Andrew L. Hughes, the

attorney for CN and Metra with all of their years of experience practicing law insisted that the proceeding continue in the state court (See Dix Declaration par. 4).

11. On August 4, 2008, Judge O'Gara set a briefing schedule for the two frivolous motions filed by the attorney for CN and Metra requiring the Plaintiff to respond to the Defendant's Motions by September 1, 2008. Currently the Plaintiff is carrying the burden of prosecuting the same civil action in both the federal and state court to the unfair advantage of CN and the EEOC.
12. Plaintiff further alleges that there are no separate and independent claims or causes of action that would be removable if sued on alone.
13. This action was therefore improperly removed to this court and should be remanded to the Circuit Court of Cook County, Illinois.

WHEREFORE, plaintiff prays that this court enter an order remanding this cause to the Circuit Court of Cook County, Illinois.

Respectfully submitted,

Gerald Dix

Gerald Dix, pro se
9432 S Massasoit
Oak Lawn, IL 60453
(708) 423-3946
gdix3@hotmail.com

DATED: 08/20/08

CERTIFICATE OF SERVICE

I certify that the foregoing was served on the following parties on August 20, 2008 by United States Mail, proper postage affixed, and addressed as follows:

Daniel R. LaFave
Union Pacific Railroad Company
101 North Wacker Drive, Room 1920
Chicago, IL 60606

Mona Papillon
Attorneys for US EEOC
1801 L Street, N.W.
Washington D.C. 20507

Attorney for Canadian National Railway and Metra:

Michael O. Vates
MacCabe & McGuire
77 West Wacker Drive, Suite 3333
Chicago, Illinois 60601



Gerald Dix, Plaintiff pro se

FIRM CODE. 30800

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

GERALD DIX,

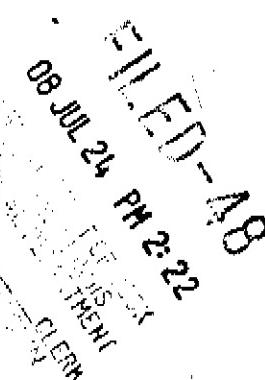
Plaintiff,

v.

CANADIAN NATIONAL RAILWAY,
UNION PACIFIC RAILROAD, METRA
RAILROAD, EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Defendants.

Case No. 2008 M1 301898



**DEFENDANT CANADIAN NATIONAL'S MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

Defendant, CANADIAN NATIONAL RAILWAY COMPANY, by its attorneys, MacCabe & McGuire, pursuant to 735 ILCS 5/2-619 (9) for its motion to dismiss with prejudice plaintiff's complaint states as follows:

1. This matter arises from an incident on March 7, 2007 involving an alleged train collision in Chicago, Illinois. Plaintiff has filed suit against Canadian National Railway Company ("CN") alleging that it carelessly and negligently operated a UP locomotive. See plaintiff's complaint paragraph 8 (a-f) as Exhibit 1.

2. The train crew of the locomotive at issue were Mr. Donald Sutton and Mr. Kelvin Stovall. The Chicago Central and Pacific Railroad Company was the entity which employed the train crew. Mr. Sutton and Mr. Stovall were not employees of the CN.

3. The CN had no involvement with this incident or the allegations in plaintiff's complaint. See Affidavit of Donald Corp as Exhibit 2.

4. Moreover, plaintiff has not perfected service on the Canadian National, which further justifies dismissal.

Exhibit 1

WHEREFORE, defendant CANADIAN NATIONAL RAILWAY COMPANY prays that this Honorable Court dismiss plaintiff's complaint with prejudice.

MacCabe & McGuire

By:


Michael O. Vates
Attorneys For Defendant

Michael O. Vates
MacCabe & McGuire
77 West Wacker Drive, Suite 3333
Chicago, Illinois 60601
Phone: 312-357-2600
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

GERALD DIX)	
Plaintiff,)	
v.)	
CANADIAN NATIONAL RY, UNION)	08CV4269
PACIFIC RR, METRA RR,)	JUDGE NORGL
and the U.S. EQUAL)	MAGISTRATE JUDGE VALDEZ
EMPLOYMENT OPPORTUNITY)	
COMMISSION, an agency of the United)	
States of America)	
Defendants.)	
)	

DECLARATION OF GERALD DIX

I, Gerald Dix, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a citizen of the United States and a resident of the State of Illinois. I am the Plaintiff in the above entitled case.
2. On July 30, 2008, I notified the attorney of record for the EEOC, Mona Papillon by facsimile at 1-202-663-4639 of the state proceeding that would occur on August 4, 2008 in room 1501 of the Daley Center at 10:30 am. A copy of the facsimile I sent to the EEOC is attached to this Declaration as Exhibit A.
3. On August 4, 2008, I appeared before Cook County Judge Lawrence O'Gara to defend my lawsuit (case number 2008 M1 301898) against dismissal by the attorney for CN and Metra. I promptly notified Judge O'Gara that I received the EEOC's Notice of Removal and that I had confirmed that the case had been removed to the federal court and that the Judge Norglc was the presiding judge.
4. Despite my objection to the state court proceeding on August 4, 2008, Judge O'Gara and Andrew L. Hughes, the attorney for CN and Metra insisted on establishing a briefing

schedule for two Motions to Dismiss filed by Michael O. Vates on behalf of CN and Metra in the state court.

5. I am currently engaging in discovery procedure and I am bound by Illinois Rules of Jurisprudence. I have obtained an Affidavit by Alice J. Graff from the Clerk of the Circuit Court for Cook County in the Sixth District located at 16501 South Kedzie Parkway in Markham, Illinois which establishes the fact that Donald Sutton was an employee of Canadian National contrary to the false allegations made by Canadian National and its attorneys, Michael O. Vates and Andrew L. Hughes. A copy of the Affidavit I obtained from the Clerk of the Circuit Court for Cook County is attached to this Declaration as Exhibit B.

Executed on: 08/20/08


Gerald Dix

To: MacCabe & McGuire **From:** Gerald Dix

Fax: 312-357-0317 **Pages:** 5

Phone: 312-357-2600 **Date:** 7/30/2008

Re: Dix v. Canadian National Railway, et al **CC:** EEOC, Union Pacific
Case No. 2008 MI 301898

Aug 4, 2008 Motion

Dear Defendants:

Per my discussion with counsel for Metra and CN on July 29, 2008, I will appear before the presiding judge in room 1501 of the Daley Center at 10:30 am on August 4, 2008. At that time I will discuss suitable methods for dealing with your two frivolous motions. As to Don Corp's false allegation that Donald Sutton and Kelvin Stovall were not employees of the CN, I will provide the Court with information that CN presented Mr. Sutton and Mr. Stovall as their own employees to the NTSB. I have copies of the "Personal Work Record" for all CN crew members for CN train No. R95491 which shows that they are employees of CN (a copy of which is included with this fax). I would appreciate it if you would provide the originals of these "Personal Work Records" so the judge can see the unmarked versions. I have also included a copy of the first page of the US DOT Accident Investigation Report HQ-2007-11 which indicates that the name of Railroad operating train #1 was in fact Canadian National-North America with an alphabetic code of CN. I should also remind you that any locomotive operated by employees of the "Chicago Central and Pacific Railroad Company" must be identified by the code of "CC" instead of "CN". Your motions seeking to avoid responsibilities for your reckless disregard for public safety is only interpreted as a furtive ploy by you and the other defendants; for this reason, I intend to seek sanctions against all of the defendants.

Sincerely,

Gerald Dix

email: gdix3@hotmail.com

Exhibit A

July 30, 2008



PERSONAL WORK RECORD

PERSONAL WORK RECORD FOR:
Employee: SUTTON, D R

Empl. No.: [REDACTED] Current Status: A

PIN: [REDACTED]

Hired Date: 03/22/1994

D.O.B.: [REDACTED]

Department: T

Homer: [REDACTED]

Cart: ENGR

Work Location: HAWTHORNE, IL

Last Medical:

Results: ()

Leaf Rules Exam: 02/16/2001

Results: (P)

Remedial Training: 10/30/2002

The Following Incidents Have Been Entered On This Individual

Total of Demerits: 0

0 Points

Total of Suspension: 0

0 Days

Corrective Interviews: 0

Written Reprimands: 0

Discharges: 0

The Following Letters Have Been Entered On This Individual

Training: 5

Safety: 1

Company Issue: 3

Merrit: 0

Caution: 2

Foreman Discipline: 0

Investigations: 6

Engineer Qualifications/Testing: 0

Miscellaneous: 5

Remedial Training: 0

Medicals: 0

Leaves of Absence: 0

Furloughs: 0

Decertified: 0

Total Time Out Of Service Due To:

Injury: 0

Furlough/LoffA: 0

TOTAL: 0

Total days restricted duty: 0

INJURIES:

* Lost Time: 0

** Reportable: 0

** Lite Duty: 0

July 30, 2008

PERSONAL WORK RECORD FOR:

Employee: STOVAL, K

Empl. No.:

PIN: [REDACTED]

Current Status: A

Hired Date: 02/13/2008

Department: TRANS

Cart: CONDR

Work Location: HARVEY, IL

D.O.B.: [REDACTED]

Home: [REDACTED]

Last Medical: 02/02/2008

Results: (P)

Last Rules Exam: 12/01/2008

Results: (P)

Remedial Training:

The Following Incidents Have Been Entered On This Individual:

Total of Demerits: 0

0 Points

Total of Suspensions: 0

0 Days

Corrective Interviews: 0

Written Reprimands: 0

Discharges: 0

The Following Letters Have Been Entered On This Individual:

Training: 2

Safety: 0

Company Issue: 1

Merit: 0

Caution: 1

Foreman Discipline: 0

Investigations: 1

Engineer Qualifications/Testing: 0

Miscellaneous: 0

Remedial Training: 0

Medicalese: 0

Leaves of Absence: 0

Furloughs: 0

Decertified: 0

Total Time Out Of Service Due To:

(injury: 0

Total days restricted duty: 0

Furlough/Loss: 0

TOTAL: 0

INJURIES:

** Lost Time: 0

** Reportable: 0

** Lite Duty: 0

July 30, 2008



PERSONAL WORK RECORD

PERSONAL WORK RECORD FOR:
Employee: LYONS, C D

Empl. No.: [REDACTED] Current Status: A

PIN: [REDACTED]

D.O.B.: [REDACTED]

Hired Date: 02/12/2007

Department: A

Class: CONDR

Work Location: HAWTHORNE, IL

Homer: [REDACTED]

Last Medical: 02/21/2007

Results: (R)

Last Pulse Exam: 02/16/2007

Results: (P)

Remedial Training:

The Following Incidents Have Been Entered On This Individual

Total of Demerits: 0

0 Points

Total of Suspension: 0

0 Days

Corrective Interviews: 0

Written Reprimands: 0

Discharges: 0

The Following Letters Have Been Entered On This Individual

Training: 1

Safety: 0

Company Issue: 0

Merit: 0

Caution: 0

Foreman Discipline: 0

Investigations: 0

Engineer Qualifications/Testing: 0

Miscellaneous: 0

Remedial Training: 0

Medicals: 1

Leaves of Absence: 0

Furloughs: 0

Decertified: 0

Total Time Out Of Service Due To:

Injury: 0

Total days restricted duty: 0

Furlough/LofA: 0

TOTAL: 0

INJURIES: 0

** Lost Time: 0

** Reportable: 0

** Lite Duty: 0

July 30, 2008

DEPARTMENT OF TRANSPORTATION FEDERAL RAILROAD ADMINISTRATION				FRA FACTUAL RAILROAD ACCIDENT REPORT				FRA File # HO-2007-11					
1. Name of Railroad Operating Train #1 Canadian National - North America (CN)				1a. Alphabetic Code CN		1b. Railroad Accident/Incident No. 68474							
2. Name of Railroad Operating Train #2 Northeast L. Regional Container Rail Corp. (NHC)				2a. Alphabetic Code NIRC		2b. Railroad Accident/Incident No. SWA009							
3. Name of Railroad Operating Train #3 NPA				3a. Alphabetic Code N/A		3b. Railroad Accident/Incident No. N/A							
4. Name of Railroad Responsible for Track Maintenance Amtrak (ATK)				4a. Alphabetic Code ATK		4b. Railroad Accident/Incident No. 101734							
5. U.S. DOT/AAR Grade Crossing Identification Number				5. Date of Accident/Incident Month Day Year Month 08 Day 02 Year 2007		6. Time of Accident/Incident 09:56:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM							
7. Type of Accident/Incident (single entry in code box)		1. Derailment 2. Head-on collision 3. Raking collision 4. Rear end collision 5. Side collision 6. Broken Train collision		7. Hwy-rail crossing 8. RR grade crossing 9. Obstruction 10. Explosive/detonation 11. Fire/violent rupture 12. Other impacts		13. Other (describe in narrative) 02							
9. Cargo Carrying HAZMAT 0		10. HAZMAT Car Damaged/Demolished 0		11. Car Relocating HAZMAT N/A		12. People Evacuated 0		13. Division CHICAGO TERMINAL					
14. Nearest City/Town CHICAGO				15. Miles/Post (to nearest tenth) 1.4		16. State/Abbr. Code N/A 1L		17. County COOK					
18. Temperature (F) (specify if minus) 20 F		19. Visibility (single entry) 1. Down 2. Dark 3. Day 4. Dark		20. Weather (single entry) 1. Clear 2. Cloudy 3. Rain 4. Fog 5. Snow		21. Type of Track Code 1. Main 2. Siding 3. Yard 4. Industry		22. Time Table Direction Code 1. North 2. East 3. South 4. West					
22. Track Name/Number MAIN TRACK NO. 4				23. RRA Track Code Class (I-X) X		24. Average Track Density (gross tons in million) 59		25. Time Table Direction Code 1. North 2. East 3. South 4. West					
OPERATING TRAIN #1													
26. Type of Equipment Consist (single entry)		1. Freight train 2. Passenger train 3. Commuter train 4. Cut off train		4. Work train 5. Single car 6. Light local(s)		7. Yard/switching 8. Auto train 9. Main/intersections		A. Spec. MoW Equip. Code B. Attendant C. Remote D. Manual		27. Was Equipment Attended? 1 Yes 2. No 3. Not in use		28. Train Number/Symbol R45421-07	
29. Speed (recorded speed, if available) Code R - Recorded E - Estimated E - Estimated 14 MPH R		30. Method(s) of Operation a. ATCS b. Auto train control c. Auto train stop d. Cab e. Traffic f. Interlocking		31. Methods of Operation e. Automatic block f. Current of traffic g. Other than main track h. Train table/rail orders i. Track warrant control j. Diesel traffic control l. Yard limits		m. Special instructions n. Other than main track o. Positive train control p. Other (Specify in narrative) Code(s)		32. Remotely Controlled locomotive? 0 = Not a remotely controlled 1 = Remote control portable 2 = Remote control tower 3 = Remote control transmitter + more than one transmitter + more than one remote control transmitter					
33. Principal Car/Unit (1) Cars involved (damaged, struck, etc.)		34. Initial Car Number UP#322		35. Position in Train 1		36. Load/Miles/Net N/A		37. If railroad employee(s) tested for drug/alcohol use, enter the number that were positive in the appropriate box.		38. Alcohol Drug 00 1			
(2) Cars (if mechanical caused reported)		39. Total 0		40. Was this vehicle transporting passengers? (Y/N) N									
41. Locomotive Units (1) Total in Train (2) Total Damaged		42. Head Eng. Mid Train 43. Manual 44. Remote 45. Remote 46. Manual 47. Remote		48. Cars 1		49. Freight 50. Pass. 51. Freight 52. Pass. 53. Caboose 54. Caboose							
55. Equipment Damage This Consist Number of Crew Members		56. Track, Signal, Way, & Structure Damage 1000		57. Primary Use Code HO17		58. Contributing Cause Code N/A		59. Length of Time on Duty					
48. Engineer/ Operator Casualties to Total Nonfatal		49. Firemen 50. Train Passengers 51. Other 0 0 0		50. Engineer Operator 1 HR 2 MI 36		51. Conductor HR 2 MI 36		52. DOT Device? 1. Yes 2. No 3. Not in use		53. Was DOT Device Properly Armed? 1. Yes 2. No 3. Not in use			
54. Caboose Occupied by Crew? Nonfatal		55. Methods of Operation a. ATCS b. Auto train control c. Auto train stop d. Cab e. Traffic f. Interlocking		56. Methods of Operation e. Automatic block f. Current of traffic g. Other than main track h. Train table/rail orders i. Track warrant control j. Diesel traffic control l. Yard limits		57. Remotely Controlled Locomotive? 0 = Not a remotely controlled 1 = Remote control portable							
OPERATING TRAIN #2													
58. Type of Equipment Consist (single entry)		59. Speed (recorded speed, if available) Code R - Recorded E - Estimated 0 MPH R		60. Method(s) of Operation a. ATCS b. Auto train control c. Auto train stop d. Cab e. Traffic f. Interlocking		61. Special Instructions m. Special instructions n. Other than main track		62. Contributing Cause Code N/A					
63. Primary Use Code HO17		64. Was Equipment Attended? 1 Yes 2 No 3. Not in use		65. Caboose Occupied by Crew? 1. Yes 2. No 3. Not in use		66. Length of Time on Duty							

3115,

(Rev. 4/15/99) CCG 0050 B

Date: September 22, 2004

Case Number: 04 M6 1951

INTERROGATORIES/ANSWER TO WAGE DEDUCTION PROCEEDINGS

Employer/Agent: CANADIAN NATIONAL RAILROAD, certifies under penalty of perjury that the following Answer is true and correct to the best of his/her knowledge and belief concerning the property of the judgment debtor.

Debtor Name: DONALD SUTTON Soc. Sec. No. 319-52-9034Do you pay monies to the judgment debtor listed above? Yes No

State whether any funds paid to the debtor are for disability, retirement, or are in any other way exempt or subject to other Court Order:

One Pay Period equals: 10 day(s) 2 week(s) _____ month(s)

CALCULATION TO DETERMINE AMOUNT OF WITHHOLDING:

(A) Gross Wages minus mandatory contributions to pension or retirement plans is

(A) 4282.30(B) METHOD I 15% of (A)(B) 642.35METHOD II

(C) Enter Total FICA, State and Federal Tax and Medicare

(C) 1084.71

(D) Subtract (C) from (A)

(D) 3197.59

(E) Enter 45 x Current Federal Minimum Hourly Wage per pay period.

(E) 231.25

(F) Subtract (E) from (D)

(F) 2965.84

(G) Enter the lesser of Line (b) or (f)

(G) 642.35

(H) Enter Child Support or other Court Ordered Deduction

(H) _____

(I) Subtract (H) from (G)

(G) _____

(J) Subtract Employer's Statutory Fee (§ 5/12 - 814)

(J) 12.00

(K) Amount to be applied to judgment

(K) 630.35

Line I is the amount to be withheld from employee's paycheck as of the date of service of Summons and not disbursed until further order of Court.

Signature of Employer: Alice J. Graff 9/20/04INSTRUCTIONS

- Mail a copy of this Answer to the Court, mail to attorney for Plaintiff, and give a copy to the Defendant. If filing in Dist. 1 Municipal you may fax your Answer to 312-603-6522.
- You will receive a copy of a Court Order by fax or mail instructing you how to proceed and where to send deducted funds.

Employer/Agent:

Agent Name: Alice J. GraffEmployer Name: CANADIAN NATIONAL RAILROADAddress: 17641 S. ASHLAND AVE
Homewood IL 60430Phone: 708-332-3043Fax: 708-332-3854

Clerk of the Circuit Court

COOK County Courthouse

16501 S. KEDZIE PARKWAY
StreetMARKHAM IL 60426
City State Zip

NOTE: A copy of this Answer should be mailed to the Court, Attorney for Plaintiff or Judgment Creditor and to the Defendant.

DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Exhibit B